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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

APR 24 2003

FILE:

EAC 02 063 50647

Office: Vermont Service Center

Date:

IN RE: Petitioner:

Beneficiary:

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he entered into the marriage to the U.S. citizen in good faith. The director, therefore, denied the petition.

On appeal, counsel submits additional evidence.

8 C.F.R. § 204.2(c)(1), in effect at the time the self-petition was filed, states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States in 1990. He was subsequently paroled into the United States on June 19, 2001. The petitioner married his United States citizen spouse on March 24, 2000 at Lakewood, New Jersey. On December 10, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during the marriage.

8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that he entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that he had met this requirement, he was requested on April 2, 2002 to submit additional evidence. The director listed examples of the evidence he may submit to show the existence of a good-faith marriage. The director reviewed and discussed all the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. He noted that the petitioner's self-affidavit was not substantiated by any further documentation, and that the copies of the bills submitted are all in his spouse's name only, with the exception of one bill. He further noted that this particular bill shows his name only, and also shows a different address than that which was shown on all of the other bills bearing his spouse's name.

On appeal, counsel submits affidavits from three individuals: the first, [REDACTED] pastor of the church, Iglesia Faro De Luz, stating that the petitioner and his spouse [REDACTED] lived together and they were a loving couple, he visited their home many times since they had a business, and many of the workers were members of the church. He further states that the marriage was good and solid with love and unity, however, the drugs [REDACTED] was taking destroyed the marriage. He further states that the petitioner still loves her very much, but [REDACTED] does not want help. He indicates that the petitioner is still trying to help and protect [REDACTED] and he still watches after her. He added that the couple had been childhood sweethearts, the marriage was a real one, and one that was of good faith. The second affidavit was from [REDACTED] certifying that she is a friend of the couple, that they loved one another, and that she is sorry to say that [REDACTED] drug habit had destroyed the marriage. The third affidavit from

[REDACTED] part owner of James & Associates (rental unit), indicates that the petitioner [REDACTED] and that she did not allow them to sign another lease because [REDACTED] behavior. [REDACTED] states that [REDACTED] not only abused the petitioner, but also caused quite a bit of damage to the rental unit. She added that the marriage is for real and she can honestly say that no man should have to put up with what the petitioner went through.

Counsel furnished a copy of a rental agreement, signed by the petitioner and [REDACTED] on March 1, 2001, for rental of [REDACTED]. Also furnished is a copy of a rental agreement, signed by the petitioner and [REDACTED] on January 27, 2000, for rental [REDACTED] copies of natural gas bills, under [REDACTED] name, for services [REDACTED] for the period June 2000 through January 2001; a copy of an energy bill, under the name of the petitioner, for services at 126 3rd Street for the billing period May 16 to June 8, 2000; and a Money Gram dated August 2, 2001, in the amount of \$200, sent by the petitioner to [REDACTED] which counsel states was for [REDACTED] plane fare from Texas to New Jersey. Counsel asserts that the petitioner operates his own business known as BMW Drywall, owned by the petitioner and his spouse, and that the parties rented [REDACTED] for accommodations and use of the construction workers employed by the petitioner.

These documents, in conjunction with other documentary evidence contained in the record of proceeding, are sufficient evidence to establish that the petitioner entered into the marriage to the citizen in good faith. The petitioner has, therefore, overcome the director's finding, pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden. As the director did not raise any other basis for denial, the appeal will be sustained.

ORDER: The appeal is sustained.